

Arizona budget woes could affect criminal sentencing

45 comments by **Paul Davenport** - Nov. 9, 2010 02:35 PM
Associated Press

Arizona's budget troubles could prompt lawmakers to seriously consider changing criminal sentencing laws to reduce or slow the costly growth of the state's prison population, two legislators said Tuesday.

Rep. Bill Konopnicki, R-Safford, said many of his colleagues' fear of being labeled soft on crime has kept the Legislature from taking up the issue.

"We cannot afford the current policies that we have, nor is there the will in the Legislature to change it," Konopnicki said.

But he and Rep. Cecil Ash, R-Mesa, said that could change in 2011 due to steady increases in prison costs as the state is trying to close big budget shortfalls.

"Between policy and budget, we are headed to a major crash," said Konopnicki, who will leave the Legislature in January. "The financial crisis is going to cause some people to take a good look at what we're doing."

Arizona has tough criminal sentencing laws, many implemented in 1993, and the state's prison costs are now 10 times what they were 30 years ago, while the state's population has doubled during the same period.

The Department of Corrections' annual appropriation for the current fiscal year is \$949 million, which is 11 percent of the current \$8.5 billion budget and an amount larger than the projected shortfall of up \$825 million.

Ash heads a House committee studying possible sentencing changes.

"We have a lot of good ideas out there," Ash said. "I sense there's a will to do things differently." Options identified by legislative budget analysts to cope with rising prison costs include expanding the prison system, diverting some offenders to treatment programs and probation, releasing some prisoners early and returning fewer parolees to prison for violations.

Konopnicki participated in a panel discussion organized by Arizona State University's Morrison for Public Policy. Ash attended and spoke from the audience.

Though those two lawmakers each said they perceived the budget troubles created new impetus for consideration of sentencing changes, another Republican legislator recently said the options identified by the legislative budget analysts would receive scant consideration.

Democrats' election-season criticism of Republican Gov. Jan Brewer for the July 30 escape of three violent offenders from a privately run state prison made sentencing changes a political issue, said Rep. John Kavanagh, R-Fountain Hills.

REFERENCE TITLE: motor vehicle safety monitoring equipment

S. B. _____

Introduced by _____

AN ACT

AMENDING SECTION 28-959.01, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE EQUIPMENT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-959.01, Arizona Revised Statutes, is amended to read:
28-959.01.

A. This section does not apply to:

1. Front side wing vents and windows that have a substance or material in conjunction with glazing material that has a light transmission of thirty-three per cent plus or minus three per cent and a luminous reflectance of thirty-five per cent plus or minus three per cent.
2. Front side wing vents and windows that have a substance or material not attached in conjunction with glazing material that is used by a vehicle operator on a moving vehicle during daylight hours as provided in section 28-922.
3. Rearview mirrors.
4. Adjustable nontransparent sun visors that are mounted forward of the side windows and that are not attached to the glass.
5. Signs, stickers or other materials that are either:
 - (a) Displayed in a seven inch square in the lower corner of the windshield farthest removed from the driver.
 - (b) Displayed in a five inch square in the lower corner of the windshield nearest the driver.
6. Side windows that are to the rear of the driver and rear windows that have a substance or material in conjunction with glazing material that has a luminous reflectance of thirty-five per cent plus or minus three per cent or less.
7. Direction, destination or termination signs on a passenger common carrier motor vehicle, if the signs do not interfere with the driver's clear view of approaching traffic.
8. Rear window wiper motors.
9. A rear trunk lid handle or hinges.
10. The rear window or windows if the motor vehicle is equipped with outside mirrors that are on both left-hand and right-hand sides of the vehicle and that are located in a manner to reflect to the driver a view of the highway through each mirror for a distance of at least two hundred feet to the rear of the motor vehicle.
11. Transparent material that is installed, affixed or applied to the topmost portion of the windshield if:
 - (a) The bottom edge of the material is at least twenty-nine inches above the undepressed driver's seat when measured from a point five inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.
 - (b) The material is not red or amber in color.
12. (a) IMMEDIATELY BEHIND, SLIGHTLY ABOVE OR SLIGHTLY BELOW THE REARVIEW MIRROR.
(b) WHERE THE REARVIEW MIRROR WOULD COMMONLY BE POSITIONED IF THE MOTOR VEHICLE IS WITHOUT A WINDSHIELD MOUNTED REARVIEW MIRROR.

B. Except as otherwise provided in this section, a person shall not operate a motor vehicle with an object or material placed, displayed, installed, affixed or applied on the windshield or side or rear windows or

with an object or material placed, displayed, installed, affixed or applied in or on the motor vehicle in a manner that obstructs or reduces a driver's clear view through the windshield or side or rear windows.

C. Except as otherwise provided in this section, a person shall not place, install, affix or apply a transparent material on the windshield or side or rear windows of a motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows.

D. Each manufacturer shall certify to the director that the product or material the manufacturer manufactures or assembles complies with the reflectivity and transmittance requirements of this section.

E. This section does not permit or prohibit the use and placement of federal, state or local certificates on any window as are required or prohibited by applicable laws.

F. A person who sells or installs objects or materials under this section shall set forth in a conspicuous manner that the installation of the object or material to the driver or passenger side window may be illegal in some states.

G. On application from a person required for medical reasons to be shielded from the direct rays of the sun that is supported by written attestation of this fact from a physician licensed pursuant to title 32, chapter 13 or 17, the department may issue an exemption from this section for a motor vehicle belonging to the person or in which the person is a habitual passenger. A person may operate a vehicle or alter the color or reduce the light transmitted through the side or rear windows of a vehicle pursuant to an exemption issued by the director.

H. In this section, unless the context otherwise requires:

1. "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the product or material including the glazing to the amount of total light falling on the product or material and the glazing.

2. "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the product or material to the amount of total light falling on the product or material.

3. "Manufacturer" means either: (a) A person who engages in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials.

(b) A person who fabricates, laminates or tempers the glazing material incorporating the capacity to reflect or to reduce the transmittance of light during the manufacturing process.

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 97

HOUSE BILL 2062

AN ACT

AMENDING SECTION 13-1204, ARIZONA REVISED STATUTES; RELATING TO ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault; classification; definition

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a child who is fifteen years of age or under.
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.
8. If the person commits the assault knowing or having reason to know that the victim is any of the

following:

(a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.

(b) A constable, or a person summoned and directed by the constable while engaged in the execution of any official duties.

(c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.

(d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.

(e) A health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.

(f) A prosecutor.

9. If the person knowingly takes or attempts to exercise control over any of the following:

(a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

B. Except pursuant to subsections C and D of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6-OR 7, ~~OR~~ PARAGRAPH 8, SUBDIVISION (b), (c), (d), (e), OR (f) or paragraph 9, subdivision (c) of this section is a class 6 felony.

C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section ~~resulting~~ COMMITTED ON A PEACE OFFICER WHILE THE OFFICER IS ENGAGED IN THE EXECUTION OF ANY OFFICIAL DUTIES IS A CLASS 5 FELONY UNLESS THE ASSAULT RESULTS in any physical injury to ~~a~~ THE peace officer while the officer is engaged in the execution of any official duties, IN WHICH CASE IT is a class ~~5-4~~ felony.

D. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

E. For the purposes of this section, "prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

Sec. 2. Short title

This act may be cited as the "Lieutenant Eric Shuhandler Act".

APPROVED BY THE GOVERNOR APRIL 20, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2010.

House Engrossed Senate Bill

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 241

SENATE BILL 1135

AN ACT

AMENDING SECTION 13-1204, ARIZONA REVISED STATUTES; RELATING TO AGGRAVATED ASSAULT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault; classification; definition

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a child who is fifteen years of age or under.
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:

- (a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.
- (b) A constable, or a person summoned and directed by the constable while engaged in the execution of any official duties.
- (c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.
- (d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
- (e) A health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.
- (f) A prosecutor.
- (g) A [CODE ENFORCEMENT OFFICER AS DEFINED IN SECTION 39-123](#).
- (h) [A STATE OR MUNICIPAL PARK RANGER](#).

9. If the person knowingly takes or attempts to exercise control over any of the following:

- (a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.
- (b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.
- (c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

B. Except pursuant to subsections C and D of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section resulting in any physical injury to a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony.

D. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

E. For the purposes of this section, "prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

APPROVED BY THE GOVERNOR MAY 6, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2010.

House Engrossed Senate Bill

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 276

SENATE BILL 1266

AN ACT

AMENDING TITLE 8, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-309; AMENDING SECTIONS 13-1204, 13-3601 AND 13-3602, ARIZONA REVISED STATUTES; RELATING TO CRIMES AND OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 8, chapter 3, article 1, Arizona Revised Statutes, is amended by adding section 8-309, to read:

8-309. Unlawful use of an electronic communication device by a minor; classification; definitions

A. IT IS UNLAWFUL FOR A JUVENILE TO INTENTIONALLY OR KNOWINGLY USE AN ELECTRONIC COMMUNICATION DEVICE TO TRANSMIT OR DISPLAY A VISUAL DEPICTION OF A MINOR THAT DEPICTS EXPLICIT SEXUAL MATERIAL.

B. IT IS UNLAWFUL FOR A JUVENILE TO INTENTIONALLY OR KNOWINGLY POSSESS A VISUAL DEPICTION OF A MINOR THAT DEPICTS EXPLICIT SEXUAL MATERIAL AND THAT WAS TRANSMITTED TO THE JUVENILE THROUGH THE USE OF AN ELECTRONIC COMMUNICATION DEVICE.

C. IT IS NOT A VIOLATION OF SUBSECTION B OF THIS SECTION IF ALL OF THE FOLLOWING APPLY:

1. THE JUVENILE DID NOT SOLICIT THE VISUAL DEPICTION.

2. THE JUVENILE TOOK REASONABLE STEPS TO DESTROY OR ELIMINATE THE VISUAL DEPICTION OR REPORT THE VISUAL DEPICTION TO THE JUVENILE'S PARENT, GUARDIAN, SCHOOL OFFICIAL OR LAW ENFORCEMENT OFFICIAL.

D. A VIOLATION OF SUBSECTION A OF THIS SECTION IS A PETTY OFFENSE IF THE JUVENILE TRANSMITS OR DISPLAYS THE VISUAL DEPICTION TO ONE OTHER PERSON. A VIOLATION OF SUBSECTION A OF THIS SECTION IS A CLASS 3 MISDEMEANOR IF THE JUVENILE TRANSMITS OR DISPLAYS THE VISUAL DEPICTION TO MORE THAN ONE

OTHER PERSON.

E. A VIOLATION OF SUBSECTION B OF THIS SECTION IS A PETTY OFFENSE.

F. ANY VIOLATION OF THIS SECTION THAT OCCURS AFTER ADJUDICATION FOR A PRIOR VIOLATION OF THIS SECTION OR AFTER COMPLETION OF A DIVERSION PROGRAM AS A RESULT OF A REFERRAL OR PETITION CHARGING A VIOLATION OF THIS SECTION IS A CLASS 2 MISDEMEANOR.

G. FOR THE PURPOSES OF THIS SECTION:

1. "ELECTRONIC COMMUNICATION DEVICE" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3560.

2. "EXPLICIT SEXUAL MATERIAL" MEANS MATERIAL THAT DEPICTS HUMAN GENITALIA OR THAT DEPICTS NUDITY, SEXUAL ACTIVITY, SEXUAL CONDUCT, SEXUAL EXCITEMENT OR SADOMASOCHISTIC ABUSE AS DEFINED IN SECTION 13-3501.

3. "VISUAL DEPICTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3551.

Sec. 2. Section 13-1204, Arizona Revised Statutes, is amended to read:

13-1204. Aggravated assault: classification; definition

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a child who is fifteen years of age or under.
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.
8. If the person commits the assault knowing or having reason to know that the victim is any of the following:

- (a) A peace officer, or a person summoned and directed by the officer while engaged in the execution of any official duties.
- (b) A constable, or a person summoned and directed by the constable while engaged in the execution of any official duties.
- (c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties.
- (d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
- (e) A health care practitioner who is certified or licensed pursuant to title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, as defined in section 36-550, or is afflicted with alzheimer's disease or related dementia.
- (f) A prosecutor.

9. If the person knowingly takes or attempts to exercise control over any of the following:

- (a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.
- (b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties.
- (c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution of any official duties. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

- (a) Is imprisoned or otherwise subject to the custody of any of the following:
 - (i) The state department of corrections.
 - (ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

B. A PERSON COMMITS AGGRAVATED ASSAULT IF THE PERSON COMMITS ASSAULT BY EITHER INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSING ANY PHYSICAL INJURY TO ANOTHER PERSON, INTENTIONALLY PLACING ANOTHER PERSON IN REASONABLE APPREHENSION OF IMMINENT PHYSICAL INJURY OR KNOWINGLY TOUCHING ANOTHER PERSON WITH THE INTENT TO INJURE THE PERSON, AND BOTH OF THE FOLLOWING OCCUR:

1. THE PERSON INTENTIONALLY OR KNOWINGLY IMPEDES THE NORMAL BREATHING OR CIRCULATION OF BLOOD OF ANOTHER PERSON BY APPLYING PRESSURE TO THE THROAT OR NECK OR BY OBSTRUCTING THE NOSE AND MOUTH EITHER MANUALLY OR THROUGH THE USE OF AN INSTRUMENT.

2. ANY OF THE CIRCUMSTANCES EXISTS THAT ARE SET FORTH IN SECTION 13-3601, SUBSECTION A, PARAGRAPH 1, 2, 3, 4, 5 OR 6.

~~B: C.~~ Except pursuant to subsections ~~C and D~~ **AND E** of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9, subdivision (a) of this section is a class 3 felony except if the victim is under fifteen years of age in which case it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 **OR SUBSECTION B** of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

~~E: D.~~ Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer while the officer is engaged in the execution of any official duties is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section resulting in any physical injury to a peace officer while the officer is engaged in the execution of any official duties is a class 5 felony.

~~D: E.~~ Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

~~E. F.~~ For the purposes of this section, "prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

Sec. 3. Section 13-3601, Arizona Revised Statutes, is amended to read:

13-3601. Domestic violence: definition; classification; sentencing option; arrest and procedure for violation; weapon seizure

A. "Domestic violence" means any act ~~which~~ **THAT** is a dangerous crime against children as defined in section 13-705 or an offense ~~defined~~ **PRESCRIBED** in section ~~13-1102, 13-1103, 13-1104, 13-1105, 13-1201, through 13-1202, 13-1203, 13-1204, 13-1302, through 13-1303, 13-1304, 13-1406, 13-1502, through 13-1503, 13-1504, or 13-1602,~~ **section OR 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, SECTION 13-2910, SUBSECTION A, PARAGRAPH 8 OR 9, SECTION 13-2915, SUBSECTION A, PARAGRAPH 3 OR** section 13-2916, ~~or section~~ 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
2. The victim and the defendant have a child in common.
3. The victim or the defendant is pregnant by the other party.
4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:
 - (a) The type of relationship.
 - (b) The length of the relationship.
 - (c) The frequency of the interaction between the victim and the defendant.
 - (d) If the relationship has terminated, the length of time since the termination.

B. A peace officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a

person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may

provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, section 13-709.04, subsection B applies to the sentence imposed.

~~M. If the defendant is found guilty of a first offense included in domestic violence, the court shall provide the following written notice to the defendant:~~

~~You have been convicted of an offense included in domestic violence. You are now on notice that:~~

~~1. If you are convicted of a second offense included in domestic violence, you may be placed on supervised probation and may be incarcerated as a condition of probation.~~

~~2. A third or subsequent charge may be filed as a felony and a conviction for that offense shall result in a term of incarceration.~~

~~N. The failure or inability of the court to provide the notice required under subsection M of this section does not preclude the use of the prior convictions for any purpose otherwise permitted.~~

Sec. 4. Section 13-3602, Arizona Revised Statutes, is amended to read:

13-3602. Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction

A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and the minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or

defendant, any court in this state may issue or enforce an order of protection.

B. An order of protection shall not be granted:

1. Unless the party who requests the order files a written verified petition for an order.
2. Against a person who is less than twelve years of age unless the order is granted by the juvenile division of the superior court.
3. Against more than one defendant.

C. The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
2. Name and address, if known, of the defendant.
3. Specific statement, including dates, of the domestic violence alleged.
4. Relationship between the parties pursuant to section 13-3601, subsection A and whether there is pending between the parties an action for maternity or paternity, annulment, legal separation or dissolution of marriage.
5. Name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct that is sought to be restrained.
6. Desired relief.

D. A fee shall not be charged for filing a petition under this section or for service of process. On request of the plaintiff, each order of protection that is issued by a municipal court shall be served by the police agency for that city if the defendant can be served within the city. If the defendant cannot be served within the city, the police agency in the city in which the defendant can be served shall serve the order. If the order cannot be served within a city, the sheriff shall serve the order. On request of the plaintiff, each order of protection that is issued by a justice of the peace shall be served by the constable or sheriff for that jurisdiction if the defendant can be served within the jurisdiction. If the defendant cannot be served within that jurisdiction, the constable or sheriff in the jurisdiction in which the defendant can be served shall serve the order. On request of the plaintiff, each order of protection that is issued by a superior court judge or commissioner shall be served by the sheriff of the county. If the defendant cannot be served within that jurisdiction, the sheriff in the jurisdiction in which the defendant can be served shall serve the order. Each court shall provide, without charge, forms for purposes of this section for assisting parties without counsel. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.

E. The court shall review the petition, any other pleadings on file and any evidence offered by the

plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the orders requested should issue without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The defendant may commit an act of domestic violence.
2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

F. For **THE** purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

G. If a court issues an order of protection, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.
2. Grant one party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If the other party is accompanied by a law enforcement officer, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph.
3. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.
4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.
5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.
6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.
7. **GRANT THE PETITIONER THE EXCLUSIVE CARE, CUSTODY OR CONTROL OF ANY ANIMAL THAT IS OWNED, POSSESSED, LEASED, KEPT OR HELD BY THE PETITIONER, THE RESPONDENT OR A MINOR CHILD RESIDING IN THE RESIDENCE OR HOUSEHOLD OF**

~~THE PETITIONER OR THE RESPONDENT, AND ORDER THE RESPONDENT TO STAY AWAY FROM THE ANIMAL AND FORBID THE RESPONDENT FROM TAKING, TRANSFERRING, ENCUMBERING, CONCEALING, COMMITTING AN ACT OF CRUELTY OR NEGLECT IN VIOLATION OF SECTION 13-2910 OR OTHERWISE DISPOSING OF THE ANIMAL.~~

H. The court shall not grant a mutual order of protection. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.

I. At any time during the period during which the order is in effect, a party who is under an order of protection or who is restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing that is requested by a party who is under an order of protection or who is restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.

~~J. Through December 31, 2007, the order shall include the following statement:~~

~~Warning~~

~~This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.~~

~~K. J. Beginning January 1, 2008, The order shall include the following statement:~~

~~Warning~~

~~This is an official court order. If you disobey this order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.~~

~~E. K.~~ A copy of the petition and the order shall be served on the defendant within one year from the date the order is signed. An order of protection that is not served on the defendant within one year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective on service and expires one year after service of the initial order and petition.

~~M. L.~~ Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order or any modified order was issued shall forward to the sheriff of the county in which the court is located a copy of the order of protection and a copy of

the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the sheriff shall register the order. Registration of an order means that a copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the order on the defendant.

~~N~~. M. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an order that is issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to an appropriate law enforcement agency. The law enforcement agency shall request that a prosecutorial agency file the appropriate charges. A violation of an order of protection shall not be adjudicated by a municipal or justice court unless a complaint has been filed or other legal process has been requested by the prosecuting agency. The provisions for release under section 13-3883, subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made pursuant to this section. For the purposes of this section, any court in this state has jurisdiction to enforce a valid order of protection that is issued in this state and that has been violated in any jurisdiction in this state.

~~E~~. N. A person who is arrested pursuant to subsection ~~N~~. M of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for any other additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant. The agency with custody of the defendant shall make reasonable efforts to contact the victim and other specifically designated persons in the order of protection, if known to the custodial agency, who requested notification immediately on release of the arrested person from custody.

~~P~~. O. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. A municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the municipal court or justice court determines that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or any other record in the action, to the superior court where they shall be docketed in the pending superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. Notwithstanding any other law and unless prohibited by an order of the superior court, a municipal court or justice court may hold a hearing on all matters relating to its ex parte order of protection if the hearing was requested before receiving written notice of the pending superior court action. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for maternity or paternity, annulment, legal separation or dissolution of marriage was pending in a higher court. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a

hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, section 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. No fee may be charged to either party for filing an appeal. For the purposes of this subsection, "pending" means, with respect to an action for annulment, legal separation or dissolution of marriage or for maternity or paternity, either that:

1. An action has been commenced but a final judgment, decree or order has not been entered.
2. A post-decree proceeding has been commenced but a judgment, decree or order finally determining the proceeding has not been entered.

P. A peace officer who makes an arrest pursuant to this section or section 13-3601 is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice.

Q. In addition to persons authorized to serve process pursuant to rule 4(d) of the Arizona rules of civil procedure, a peace officer or a correctional officer as defined in section 41-1661 who is acting in the officer's official capacity may serve an order of protection that is issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.

R. A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:

1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person. A protection order includes temporary and final orders other than support or child custody orders that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.
2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing state, a United States territory or an Indian tribe and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.
3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:
 - (a) The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.
 - (b) The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.
4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any

source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.

ACJC Legislative Agenda for November 18 Meeting

Right to possess firearm; mentally ill persons

Section 1. 12-2101. Judgments and orders which may be appealed

A. An appeal may be taken to the court of appeals from the superior court in the instances specified in this section.

B. From a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court, except in actions of forcible entry and detainer when the annual rental value of the property is less than three hundred dollars.

C. From any special order made after final judgment.

D. From any order affecting a substantial right made in any action when the order in effect determines the action and prevents judgment from which an appeal might be taken.

E. From a final order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment.

F. From an order:

1. Granting or refusing a new trial, or granting a motion in arrest of judgment.

2. Granting or dissolving an injunction, or refusing to grant or dissolve an injunction or appointing a receiver.

3. Dissolving or refusing to dissolve an attachment or garnishment.

G. From an interlocutory judgment which determines the rights of the parties and directs an accounting or other proceeding to determine the amount of the recovery.

H. From an interlocutory judgment in any action for partition which determines the rights and interests of the respective parties, and directs partition to be made.

I. From any interlocutory judgment, decree or order made or entered in actions to redeem real or personal property from a mortgage thereof or lien thereon, determining such right to redeem and directing an accounting.

J. From a judgment, decree or order entered in any formal proceedings under Title 14.

K. From an order or judgment:

1. Adjudging a person insane or incompetent, or committing a person to the state hospital.

2. Revoking or refusing to revoke an order or judgment adjudging a person insane or incompetent, or restoring or refusing to restore to competency any person who has been declared insane or incompetent.

3. GRANTING OR DENYING A PETITION TO RESTORE A PERSON'S RIGHT TO POSSESS A FIREARM PURSUANT TO SECTION 13-925.

L. From an order or judgment made and entered on habeas corpus proceedings:

1. The petitioner may appeal from an order or judgment refusing his discharge.

2. The officer having the custody of the petitioner, or the county attorney on behalf of the state, from an order or judgment discharging the petitioner whereupon the court may admit the petitioner to bail pending the appeal.

M. If any of the orders or judgments referred to in this section are made or rendered by a judge they are appealable as if made by the court.

**Section 2. 13-925. Restoration of right to possess a firearm; mentally ill persons; application
Petition**

A. On proper application, a person who was found to constitute a danger to himself or others, or to be persistently or acutely disabled or gravely disabled and who was subject to a treatment order pursuant to section 36-540, may request PETITION the court that entered the A treatment order THAT RESULTED IN THE PERSON EITHER BEING CLASSIFIED AS A PROHIBITED

26

POSSESSOR AS DEFINED IN SECTION 13-3101 OR BEING SUBJECT TO THE PROVISIONS OF 18 UNITED STATES CODE SECTION 922(d) (4) OR (g) (4) to restore the person's right to possess a firearm on a showing by clear and convincing evidence that the person no longer suffers from the mental disorder that led to the finding that the person constituted a danger to himself or others, or was persistently or acutely disabled or gravely disabled.

B. The person or the person's guardian or attorney may file the application PETITION PROVIDED FOR IN SUBSECTION A OF THIS SECTION. THE PETITION SHALL BE SERVED UPON THE ATTORNEY FOR THE STATE WHO APPEARED IN THE UNDERLYING CASE.

B C. On filing of the application PETITION the court shall set a hearing at which the applicant. AT THE HEARING THE PERSON shall present psychological or psychiatric evidence in support of the application AND THE STATE SHALL PRESENT THE PERSON'S CRIMINAL HISTORY RECORDS. THE COURT SHALL ALSO CONSIDER THE FOLLOWING:

- 1. EVIDENCE OF THE CIRCUMSTANCES RESULTING IN THE PERSON BEING DECLARED A PROHIBITED POSSESSOR,**
- 2. THE PERSON'S RECORD, INCLUDING AT A MINIMUM, THE PERSON'S MENTAL HEALTH AND CRIMINAL HISTORY RECORDS,**
- 3. THE PERSON'S REPUTATION, DEVELOPED, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS, TESTIMONY, OR OTHER CHARACTER EVIDENCE.,**
- 4. The State may present Evidence that the person remains a danger to himself or others, or remains persistently or acutely OR GRAVELY disabled, OR CONTINUES TO FALL WITHIN THE PROVISIONS OF 18 UNITED STATES CODE SECTION 922(d)(4) OR (g)(4), and should remain a prohibited possessor.,**
- 5. ANY OTHER EVIDENCE DEEMED ADMISSIBLE BY THE COURT.**

D. THE PERSON SHALL HAVE THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE THAT:

- 1. THE PERSON WILL NOT BE LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY, AND**
- 2. GRANTING RELIEF WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.**

E. AT THE CONCLUSION OF THE HEARING THE COURT SHALL ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

F. IF THE COURT FINDS BOTH ELEMENTS SET FORTH IN SUBSECTION D OF THIS SECTION ARE MET:

- 1. THE PERSON'S RIGHT TO POSSESS A FIREARM PURSUANT TO 18 UNITED STATES CODE SECTION 922(d) (4) OR (g) (4) SHALL BE RESTORED.**
- 2. THE COURT MAY ISSUE AN ORDER RESTORING THE PERSON'S RIGHT TO POSSESS A FIREARM FOR THE PURPOSES OF SECTION 13-3101, SUBSECTION A, PARAGRAPH 7(a).**

C G. A finding that the person no longer suffers from the mental disorder pursuant to

subsection A of THE GRANTING OF RELIEF UNDER this section only restores the person's right to possess a firearm and does not apply to and has no effect on any of the other rights or benefits the person receives.

H. THE COURT SHALL PROMPTLY NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF AN ORDER GRANTING A PETITION UNDER THIS SECTION. THE DEPARTMENT SHALL AS SOON THEREAFTER AS PRACTICABLE UPDATE, CORRECT, MODIFY, OR REMOVE THE PERSON'S RECORD IN ANY DATABASE THAT THE DEPARTMENT MAINTAINS AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CONSISTENT WITH THE RULES PERTAINING TO THE DATA BASE. THE DEPARTMENT SHALL NOTIFY THE UNITED STATES ATTORNEY GENERAL THAT SUCH A BASIS NO LONGER APPLIES.

I. A RECORD OF ALL PROCEEDINGS IN THE SUPERIOR COURT SHALL BE CREATED AND MAINTAINED PURSUANT TO RULES OF THE SUPREME COURT.

Section 3. 13-4414.01. Notice of hearing on application to restore right to possess firearm; right to be heard

A. THE VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY PROCEEDING IN WHICH THE DEFENDANT HAS FILED A PETITION PURSUANT TO SECTION 13-925 TO HAVE THE DEFENDANT'S RIGHT TO POSSESS A FIREARM RESTORED.

B. IF THE VICTIM HAS MADE A REQUEST FOR POST-CONVICTION NOTICE, THE ATTORNEY FOR THE STATE SHALL PROVIDE NOTICE TO THE VICTIM AT LEAST FIVE DAYS BEFORE THE HEARING.

AGENCY LEGISLATIVE PROPOSAL

Agency: Arizona Department of Juvenile Corrections

Division: Communications Division

Potential Sponsors: Unknown

Proposal: To discharge juvenile offenders from the jurisdiction of the Arizona Department of Juvenile Corrections (ADJC), who have detainers with Immigration Customs and Enforcement (ICE) and have completed the minimum length of stay in a secure care facility.

Background: When juvenile offenders are released from a secure care facility to the custody of ICE they are on conditional liberty (parole) and under the jurisdiction of ADJC. From the time of release, ICE and the Office of Refugee Resettlement (ORR) in the Office U.S. Department of Health and Human Services make all pertinent decisions including where juvenile offenders are placed. ADJC does not receive timely or accurate feedback regarding the juvenile offender's physical location and, therefore, cannot properly supervise juvenile offenders once they are in federal custody. There are currently no facilities in the State of Arizona for unaccompanied minors. Therefore, juvenile offenders are often sent to Oregon, Texas and eastern states. Once released from a secure care facility, juveniles with ICE detainers should be subject to the jurisdiction of the federal government versus the Arizona Department of Juvenile Corrections.

Statutes Affected: 41-2820. Discharge

Fiscal Impact: This legislation would reduce the liability exposure to the State of Arizona and the Department of Juvenile Corrections.

ADJC has the responsibility to provide parole services for juvenile offenders on conditional liberty whose physical custody is controlled by the federal government.

Policy Impact on other Agencies: None

Potential Supporters: Unknown

Potential Opponents: Unknown

Has this been run previously? No

Can this be done administratively? No

41-2820. Discharge

A. Each youth shall be discharged from the jurisdiction of the department on attaining eighteen years of age.

B. If the department determines that the youth's treatment, rehabilitation and education pursuant to the individual treatment plan have been successfully completed and that there is a reasonable probability that the youth will observe the law and will not be a threat to the public's safety if at liberty, the youth may be granted a discharge. On the discharge of a youth pursuant to this subsection, the department shall promptly notify the committing court, the county attorney in the county in which the youth was committed and the victim or the victim's representative of the discharge.

C. Except as provided in subsection D of this section, a youth shall be discharged from the jurisdiction of the department of juvenile corrections if the youth is convicted of a felony offense.

D. A youth who is convicted of a felony offense and who committed the offense while residing in a secure care facility operated by the department of juvenile corrections either:

1. Shall be discharged from the department of juvenile corrections if the youth is sentenced to the state department of corrections.

2. May be discharged from the department of juvenile corrections if the youth is placed on adult probation and all the following apply:

(a) The youth has completed the minimum length of stay in secure care, if any, that was assigned by the committing juvenile court pursuant to section 8-341.

(b) The youth would have been eligible to be placed on conditional liberty pursuant to section 41-2818.

(c) The youth is subject to the jurisdiction of an adult probation department.

E. A youth may be discharged from the jurisdiction of the department if the youth is placed by civil commitment under the jurisdiction of another agency.

F. A youth shall be discharged from the jurisdiction of the department if the youth has completed the minimum length of stay in a secure care facility, if any, that was assigned by the committing juvenile court pursuant to section 8-341, and the Bureau of Immigration and Customs Enforcement enforces a detainer demanding custody of the youth for immigration proceedings.

AGENCY LEGISLATIVE PROPOSAL

Agency: Arizona Department of Juvenile Corrections

Division: Communications Division

Potential Sponsors: Unknown

Proposal: To include the State educational system for committed youth as a "public school" for tax credit purposes under the existing statute.

Background: The current statute does not specifically allow the State educational system for committed youth to provide a tax credit for the amount of any fees, or cash contributions by a taxpayer in support of extracurricular activities i.e., sports programs; music programs, vocational education programs, or character education programs provided by the educational system for committed youth.

Language: See Attached

Statutes Affected: 43-1089.01. Tax credit; public school fees and contributions; definitions

Fiscal Impact: None

Policy Impact on other Agencies: None

Potential Supporters: Unknown

Potential Opponents: Unknown

Has this been run previously? No

43-1089.01. Tax Credit

A. A credit is allowed against the taxes imposed by this title for the amount of any fees or cash contributions by a taxpayer or on the taxpayer's behalf pursuant to section 43-401, subsection H during the taxable year to a public school located in this state for the support of extracurricular activities or character education programs of the public school, but not exceeding:

1. Two hundred dollars for a single individual or a head of household
2. Three hundred dollars in taxable year 2005 for a married couple filing a joint return
3. Four hundred dollars in taxable year 2006 and any subsequent taxable year for a married couple filing a joint return.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

C. The credit allowed by this section is in lieu of any deduction pursuant to section 170 of the internal revenue code and taken for state tax purposes.

D. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the taxpayer may carry the amount of the claim not used to offset the taxes under this title forward for not more than five consecutive taxable years' income tax liability.

E. The site council of the public school that receives contributions that are not designated for a specific purpose shall determine how the contributions are used at the school site. If a charter school does not have a site council, the principal, director or chief administrator of the charter school shall determine how the contributions that are not designated for a specific purpose are used at the school site. **THE DIRECTOR OF THE DEPARTMENT OF JUVENILE CORRECTIONS SHALL DETERMINE HOW THE CONTRIBUTIONS TO THE STATE EDUCATIONAL SYSTEM FOR COMMITTED YOUTH THAT ARE NOT DESIGNATED FOR A SPECIFIC PURPOSE ARE USED.**

F. A public school that receives fees or a cash contribution pursuant to subsection A of this section shall report to the department, in a form prescribed by the department, by February 28 of each year the following information:

1. The total number of fee and cash contribution payments received during the previous calendar year.
2. The total dollar amount of fees and contributions received during the previous calendar year.
3. The total dollar amount of fees and contributions spent by the school during the previous calendar year.

G. For the purposes of this section:

1. "Character education programs" means a program described in section 15-719 or **IMPLEMENTED PURSUANT TO SECTION 41-2831.**
2. "Extracurricular activities" means school sponsored activities that require enrolled students to pay a fee in order to participate including fees for:
 - (a) Band uniforms.
 - (b) Equipment or uniforms for varsity athletic activities.
 - (c) Scientific laboratory materials.
 - (d) In-state or out-of-state trips that are solely for competitive events.

Extracurricular activities do not include any senior trips or events that are recreational, amusement or tourist activities.

3. "PUBLIC SCHOOL" INCLUDES THE STATE EDUCATIONAL SYSTEM FOR COMMITTED YOUTH CREATED PURSUANT TO SECTION 41-2831.

**Administrative Office of the Courts
AJC Proposals 2011-01, 04, 10**

8-356. Waiver of standards

A. The requirements of section 8-353, subsections A and B and subsection C, paragraph 2 may be waived by the supreme court for a county with a population of fewer than three hundred thousand persons if the case load of every officer OFFICERS supervising juveniles on intensive probation is not more than fifteen juveniles and the program requires visual contact with each probationer at least one time a week.

B. If a waiver is granted and the intensive probation case load for each officer does not exceed fifteen, officers may supervise other additional juveniles on probation who in the judgment of the chief probation officer require additional supervision or pose a greater than normal risk to the community, as long as the total case load does not exceed fifteen.

12-269. Probation funding; counties with a population of two million or more persons; surcharge; support

A. The administrative office of the courts shall not disburse any direct state aid for probation services monies, including motor pool costs, that are appropriated for juvenile intensive probation services pursuant to section 8-353, state aid for probation services pursuant to section 12-262, adult intensive probation pursuant to title 13, chapter 9 and community punishment programs pursuant to article 11 of this chapter to a county with a population of two million or more persons.

B. A county with a population of two million or more persons shall maintain probation standards that are otherwise prescribed by law, except that the probation ratios AND TEAM COMPOSITIONS that are listed in sections 8-203, 8-353, 12-251 and 13-916 do not apply. The county shall maintain appropriate ratios of officers to probationers consistent with evidence based practices in differentiated case management and shall annually report its performance to the chief justice of the Arizona supreme court, the speaker of the house of representatives and the president of the senate on or before October 1 of each year. The annual report shall include, for each probation program, the rate of successful completion of probation, the rate of new felony convictions and the rate of commitment to the state department of corrections or the department of juvenile corrections.

C. In lieu of the surcharge ASSESSMENT prescribed in section 12-114.01 and in addition to any other penalty, FINE, FEE, SURCHARGE OR assessment provided AUTHORIZED by law, a PERSON SHALL PAY A PROBATION ASSESSMENT A county with a population of two million or more persons shall levy a probation surcharge in an amount determined by the A county WITH A POPULATION OF TWO MILLION OR MORE PERSONS on every fine, penalty and forfeiture imposed and collected by the superior, justice and municipal courts for criminal offenses and any civil penalty imposed and collected CONVICTION FOR A CRIMINAL OFFENSE OR A FINDING OF RESPONSIBILITY for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for a violation of any local ordinance relating to the stopping, standing or operation of a vehicle, except parking violations, or for a violation of the game and fish statutes in title 17.

D. The monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the adult probation services fund established by section 12-267 or in the juvenile probation fund established by section 12-268 in such proportion as determined by the board of supervisors.

E. For the purposes of sections 12-267 and 12-268, in a county with a population of two million or more persons, probation fees under section 13-901 and probation surcharges under this section are not state appropriations.

F. Notwithstanding any other provision of this section, the administrative office of the courts shall provide centralized support services to all counties from monies that are provided for probation programs.

13-919. Waiver of standards

The requirements of section 13-916, subsection A, subsection B and subsection F, paragraph 2 may be waived for a county with a population of fewer than three hundred thousand persons if the case load of every adult probation officer OFFICERS supervising persons on intensive probation is not more than fifteen persons and the program requires visual contact with each probationer at least one time a week.

AJC Proposal 2011-07. Commissioner qualifications

A.R.S. § 12-213. Commissioners in certain counties; appointment; powers and duties; salary

A. In counties having three or more superior court judges, the presiding judge may appoint court commissioners to serve at his pleasure who shall have such powers and duties as shall be provided by statute or by rule of the supreme court, save and except such commissioners are expressly prohibited, except in default hearings, from making any ex parte orders which would deprive any person or persons from custody of their child or children, or change of counsel of attorneys, or deprive any person of their liberty, or deprive any person or entity from their property or the use thereof, or any injunctive relief.

B. Commissioners appointed under subsection A shall receive an annual salary set by the presiding judge which may not exceed ninety per cent of the salary of a judge of the superior court. The commissioner's salary shall be a county charge. An appointed commissioner shall be a duly licensed member of the state bar of Arizona, and shall have engaged in active general practice of the law for a period of not less than three years next preceding his appointment ADMITTED TO THE PRACTICE OF LAW AND A RESIDENT OF THE STATE FOR FIVE YEARS NEXT PRECEDING THE COMMISSIONER'S APPOINTMENT.

Pima County Attorney's Office proposed legislation (see previous LPC/Council agendas)

Tucson Police Department

Proposal:

Tucson Police Department wants to propose legislation that would include vehicles used to flee from law enforcement in the mandatory towing statutes.

Issue: Several years ago, the Arizona Legislature enacted a series of statutes, 28-3511, et seq., to penalize irresponsible drivers operating motor vehicles without insurance, without proper driving privileges, or in violation of certain DUI laws. Law enforcement officers are required to remove and impound vehicles operated in violation of 28-3511.

How the legislation addresses the problem:

Adding additional violations to 28-3511 related to crimes committed using a motor vehicle would further enhance public safety and provide a consequence for operating a vehicle for a

criminal purpose. Removal and impoundment of vehicles used to flee from a law enforcement officer is a prime example, although there are many other circumstances in which a driver uses a vehicle to further a criminal act and thus endangers the public. Public safety would be furthered by establishing an additional penalty through temporary impoundment of a vehicle used as an instrument in a crime.